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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ANTONIO B., a Person Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

RENAE B.,

Defendant and Appellant.

D047772

(Super. Ct. No. NJ 11750C)

APPEAL from a judgment of the Superior Court of San Diego County, Joe O.
Littlejohn, Judge. Affirmed.

Renae B. contends the court erred in denying her motion for a continuance to
further investigate possible Indian heritage before terminating her parental rights to
Antonio B. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This case began in September 2003, when Antonio was six months old and the San Diego County Health and Human Services Agency (the Agency) filed a dependency petition alleging Renae abused methamphetamine/amphetamine and was homeless. At that time, Renae stated she believed Antonio's maternal grandmother and maternal great-grandmother were of the Seminole tribe of Florida. At the detention hearing, Renae's counsel stated Renae had told him the great-grandmother was a full-blooded Seminole Indian, she was unsure which state, but believed it was in Florida.

Renae failed to reunify with Antonio and in early January 2005 her parental rights to Antonio were terminated. She appealed, contending inadequate notice was given to Indian tribes and the Bureau of Indian Affairs (BIA) pursuant to the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.). Her counsel and the Agency's counsel filed a stipulation to reverse the judgment and remand to the juvenile court for the limited purpose of directing the Agency to notice the tribes and the BIA, with instructions to reinstate the judgment if Antonio was found not to be an Indian child and for immediate issuance of the remittitur. We accepted the stipulation and reversed the judgment, filing the opinion on June 29, 2005.

On remand, the trial court provided the Agency with 75 days to notice the tribes and BIA. In September 2005, the maternal grandmother indicated the maternal great-grandfather was of Cherokee descent. Notice was sent to the BIA, Seminole and Cherokee tribes. The responses indicated Antonio was not a tribal member and the tribes declined to intervene.

At a hearing in December 2005, Renae acknowledged the information in the ICWA notices was correct but sought a continuance to obtain more information about the maternal great-grandfather's Indian heritage. She indicated the maternal grandmother had not had contact with the maternal great-grandfather, who lived in Little Rock, Arkansas, for many years and had just contacted him within the last month. The trial court engaged in a dialogue with Renae. When the trial court suggested the continuance was a stall tactic, given that Antonio's Indian heritage had been at issue for two years, Renae responded, "What's wrong with me still trying to fight for my son?" She told the court the maternal grandmother was "not educated about the tribes" and that she herself was "doing all the research." The trial court denied the continuance on the basis it was "a stall tactic" on Renae's part.

DISCUSSION

A juvenile dependency court, at the request of a party, may continue any hearing if good cause is shown and a continuance would not be contrary to the best interests of the child. (Welf. & Inst. Code, § 352, subd. (a).) Continuances in juvenile dependency cases are discouraged to avoid keeping the child "in limbo." (*In re Emily L.* (1989) 212 Cal.App.3d 734, 743; *Jeff M. v. Superior Court* (1997) 56 Cal.App.4th 1238, 1242.) A trial court's denial of a continuance is reviewed for an abuse of discretion. (*In re J.I.* (2003) 108 Cal.App.4th 903, 912.) The reviewing court must defer to the trial court's credibility determinations and resolutions of facts if supported by substantial evidence. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) " '[Where] a trial court has discretionary power to decide an issue, a reviewing court will not disturb that decision

unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination" ' " (*In re Raymundo B.* (1988) 203 Cal. App.3d 1447, 1456.)

Here, Renae did not explain what additional information she hoped to present or provide a reasonable excuse for why the information (if such existed) had not been obtained in the month before the hearing when the maternal grandmother was in touch with the maternal great-grandfather, let alone during the two years prior to the hearing when Antonio's Indian heritage had been at issue. Antonio had been in limbo for years. Under these circumstances, the trial court reasonably concluded Renae was seeking a continuance only to delay the proceedings and not to provide additional information. We find no abuse of discretion by the trial court.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

BENKE, J.

O'ROURKE, J.